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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,165	04/12/2004	Thomas R. Christianson	ChristiUtilLamp	3736
2655	7590	12/29/2005	EXAMINER	
DAVID PRESSMAN, ESQ. 1070 GREEN STREET # 1402 SAN FRANCISCO, CA 941335418			HAN, JASON	
		ART UNIT	PAPER NUMBER	2875

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/823,165	CHRISTIANSON, THOMAS R.
	Examiner	Art Unit
	Jason M. Han	2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 April 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 14 is/are allowed.
- 6) Claim(s) 1-5 and 13 is/are rejected.
- 7) Claim(s) 6-12 and 15-19 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 April 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20040823</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed August 23, 2004 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the cited reference was not identified with an appropriate publication date. Regardless, said reference was cited by the Examiner in the PTO-892 form as the patent issued (U.S. Patent D496483 S). It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

### ***Specification***

2. The disclosure is objected to because of the following informalities:
- a. Page 4, Line 4: Grammatical error – “shows” should read as “shown”;
  - b. Page 4, Line 11: Typographical error – “arts” should read as “parts”;
  - c. Page 7, Line 12: Grammatical error – “make” should read as “made”;

Appropriate correction is required.

### ***Claim Objections***

3. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When

claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered Claims 4-20 have been renumbered 3-19 respectively. Applicant is further reminded that the claim dependencies (Claims 7-8, 11-12, 15-19) are inappropriate and objected to, and Applicant should amend the claims to ensure that the claim dependencies are proper.

4. Claims 6 and 9-10 are objected to because of the following informalities: In Line 3 of the Claims, the Applicant recites the limitation, "said ball", which lacks antecedent basis. Appropriate correction is required.

5. Claim 19 is objected to because of the following informalities: The Applicant recites the limitation, "said legs", which lacks antecedent basis. Appropriate correction is required.

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The following claims have been rejected in light of the specification, but rendered the broadest interpretation as construed by the Examiner [MPEP 2111].

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### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Hsu (US Patent 6155700).

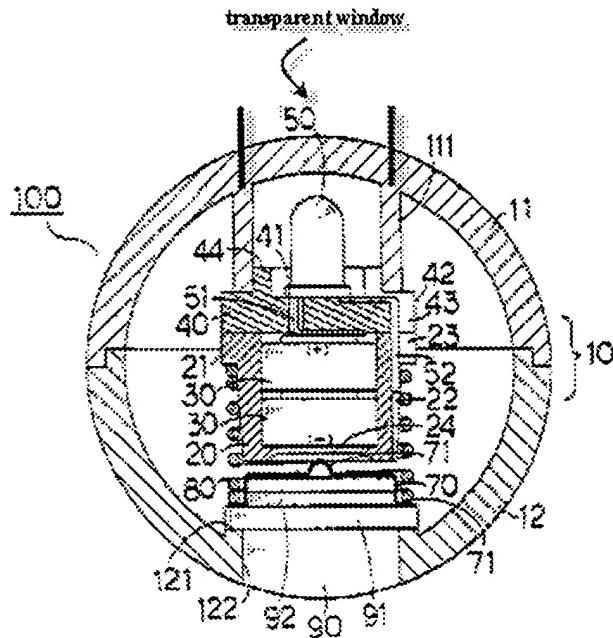
7. With regards to Claim 1, Hsu discloses a lamp including:

- A spherical body [Figure 1: (10)] having a front side containing a light portion [Figures 2-7: (11)] and a rear side [Figures 2-7: (12)] containing a pushbutton switch portion [Figures 2-7: (70-72, 90-92)];
- Whereby the outside of the spherical body includes a substantially entirely spherical surface [Figure 1];
- Said light portion [Figures 2-7: (11)] having a partially spherical surface that forms a continuous part of said spherical surface of said spherical body; and
- Said pushbutton switch portion [Figures 2-7: (90)] having a partially spherical surface that forms another continuous part of said spherical surface of said spherical body.

The functional recitation that "whereby, said lamp, when held by a clamp, can be oriented in any position" has not been given patentable weight because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6<sup>th</sup> ¶, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172' 388 O.G. 279.

8. With regards to Claim 2, Hsu discloses the light portion having a transparent window [Figures 2-5: (111) and area adjacent; see drawing below] having said partially

spherical surface and at least one light-emitting element [Figures 2-5: (50)] inside said window.



9. With regards to Claim 3, Hsu discloses the light-emitting element inside the window being a light-emitting diode [Column 2, Lines 46-47].

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4-5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu (US Patent 6155700).

11. With regard to Claims 4-5, Hsu discloses the claimed invention as cited above. In addition, Hsu teaches a transparent window [Figures 2-5: (111) and area adjacent; see drawing above] having said partially spherical surface and at least one light-emitting element [Figures 2-5: (50)] inside said window, as well as the pushbutton switch portion including a switch mechanism [Figures 3-4: (70)] inside/integral with a covering membrane [Figures 3-4: (90); Column 3, Lines 18-20], but does not specifically teach said covering membrane being flexible.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the membrane out of a flexible material [i.e., rubber], since it has been held to be within general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. In this case, incorporating the covering membrane out of a flexible material, such as rubber, would provide for a tactile button that is soft and easy to identify and push.

12. With regards to Claim 13, Hsu discloses the claimed invention as cited above. In addition, Hsu teaches the light portion including a transparent window [Figures 2-5: (111) and area adjacent; see drawing above] having said partially spherical surface and at least one light-emitting element [Figures 2-5: (50)] inside said window, as well as the pushbutton switch portion including a switch mechanism [Figures 3-4: (70)] inside/integral with a covering membrane [Figures 3-4: (90); Column 3, Lines 18-20]. Hsu does not specifically teach said covering membrane being flexible, nor teaches a portion of the spherical body that includes the pushbutton switch portion being

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removable and replaceable from the rest of the body so as to provide access to the interior of the body.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the membrane out of a flexible material [i.e., rubber], since it has been held to be within general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. In this case, incorporating the covering membrane out of a flexible material, such as rubber, would provide for a tactile button that is soft and easy to identify and push.

It also would have been obvious and advantageous to one having ordinary skill in the art at the time the invention was made to make the pushbutton switch portion removable from the rest of the body, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. In this case, providing a removable switch would further facilitate easy access to the electric components within the device.

#### ***Allowable Subject Matter***

13. Claims 6-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The Applicant has sufficiently claimed and positively defined structure for the

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clamp mechanism, whereby the prior art fails to teach or suggest the combination of structural elements disclosed and claimed herein.

14. Claim 14 is allowed.

The following is an examiner's statement of reasons for allowance: The Applicant has sufficiently claimed and narrowly defined a lamp apparatus, wherein a spherical lamp has a pushbutton switch that is a part of the spherical surface of said lamp, and further includes a clamp mechanism that pivotally maintains the spherical lamp. The prior art fails to teach or suggest the combination of structural elements disclosed and claimed herein.

15. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are further cited to show the state of the art pertinent to the current application, but are not considered exhaustive:

US Patent 5388825 to Myers et al;

US Patent 6224230 to Roegiers;

US Patent D496483 to Christianson.

US Patent 6076946 to Brouillette III et al;

US Patent 6626554 to Rincover et al;

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Han whose telephone number is (571) 272-2207. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMH (12/22/2005)



Sandra O'Shea  
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